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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 380/2017**

ATUL RAJWANSH

..... Petitioner

Through: Mr. Rahul Chauhan and Mr. O.P.
Sisodia, Advs.

versus

STATE (GOVT OF NCT OF DELHI) & ORS Respondents

Through: Mr. Siddharth S Yadav and Mr.
Vaibhav Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **08.03.2018**

Vide order dated 7th September, 2015 learned Metropolitan Magistrate awarded interim maintenance of ₹20,000/- per month to respondent nos. 2 for one year and ₹20,000/- to the child born from the wedlock of petitioner and respondent no.2 till disposal of the petition. Aggrieved by this order, petitioner preferred an appeal before the learned District & Sessions Judge. Vide order dated 20th May, 2016 appeal has been dismissed on the ground that petitioner had failed to clear the arrears of maintenance.

That is how petitioner is before this court by way of present petition under Section 482 Cr.P.C.

Learned counsel for the petitioner submits that income tax returns as well as salary slips were not considered by the trial court. Income of the petitioner was assumed as ₹60,000/- without any material on record. Learned counsel further submits that petitioner is now earning only ₹20,000/- per month, therefore, he is

not in a position to clear the arrears, inasmuch as, if entire arrears are deposited the whole purpose of appeal would stand frustrated. Petitioner has already paid ₹3.53 lacs to the respondent no.2.

Learned counsel for the respondent no.2 submits that petitioner has paid only ₹3.15 lacs out of the total arrears of more than ₹20 lacs. He submits that appeal has rightly been not heard on merits, since petitioner failed to clear the arrears of maintenance.

No hard and fast rule can be applied that appeal shall not be heard until the entire arrears are cleared. A learned Single Judge vide order dated 4th February, 2015 passed in CrI.M.C. 133/2013 titled Brijesh Kumar Gupta vs. Shikha Gupta, has held that it is not necessary to deposit the entire maintenance amount, granted by the trial court, as it would otherwise make the appeal infructuous.

Accordingly, impugned order is set aside and matter is remanded back to the Appellate Court, subject to petitioner depositing ₹5 lacs before the Appellate Court within 8 weeks. On deposit of this amount, Appellate Court shall hear the appeal on merits and dispose of the same within one month from the date of petitioner depositing aforesaid amount.

Petition is disposed of in the above terms.

A.K. PATHAK, J.

MARCH 08, 2018

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